

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EULALIA RODRIGUEZ,
Plaintiff.

-v-

ROSE M. SINGER CENTER, ET ANO,
Defendants.

Case No. 07 Civ. 3988 (RJS)

MEMORANDUM AND ORDER

RICHARD J. SULLIVAN, District Judge:

The *pro se* complaint in the above-entitled action was filed on May 22, 2007. Plaintiff filed the U.S. Marshal's Process Receipt and Return of Service form with the Clerk of the Court on August 16, 2007, unexecuted as to defendant Officer C.O. Straker. This case was reassigned to this Court's docket on September 4, 2007. On September 20, 2007, the Court received a letter from Jessica T. Cohen, Esq., on behalf of both defendants, advising the Court that they would not answer the Complaint because they believed that they had not properly been served.

On October 12, 2007, the Court issued an order directing Plaintiff to contact the Pro Se Office of this Court for assistance in prosecuting this case. To date, an affidavit of service of the summons and complaint has not been filed with the Clerk of the Court. Plaintiff's time to serve the complaint without further leave of the Court has expired.

On March 5, 2008, the Plaintiff was Ordered to Show Cause by appearing on March 24, 2008, to explain why this case should not be dismissed for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Plaintiff was advised that failure to appear or otherwise notify this Court, may result in the dismissal of this action. As of March 24, 2008, Plaintiff had not communicated with the Court, nor did she appear as she was ordered. Accordingly, for the reasons set forth above and stated on the record on March 24, 2008, the Court ordered that

this complaint be dismissed without prejudice.

However, after the March 24 conference, but before issuance of a written order dismissing the case, the Court received a letter dated March 13, 2008, addressed to the Pro Se Office, from Plaintiff, indicating that Plaintiff's address had changed and asserting that Plaintiff "would not like this case to be dismissed." Plaintiff concluded by asking the Pro Se Office, "I would like to know what I have to do next."

In light of this letter, which was postmarked March 17, 2008, the Court vacated the March 24, 2008 order dismissing this action. By order of the court dated April 29, 2008, Plaintiff was directed to submit a letter to the Court, with copies to opposing counsel, setting forth the reasons for Plaintiff's failure to serve the complaint and otherwise to prosecute this matter. The letter was due to the Court no later than May 10, 2008.

On May 23, 2008, the Court received a letter from Jessica T. Cohen, Esq., counsel for Defendants, urging the Court to dismiss the action because Plaintiff had failed to properly serve defendants or to prosecute this action.

On June 10, 2008, the Court received a letter from Plaintiff, postmarked June 5, 2008. In that letter, Plaintiff stated that she would not like her case dismissed. Plaintiff failed to explain the reasons for her failure to serve the complaint, to submit the letter on time in response to the Court's order, and otherwise to prosecute the action.

The Court notes that Plaintiff has failed to comply with the Court's orders on two separate occasions. Nevertheless, as Plaintiff is both proceeding pro se and has clearly articulated her desire to continue to prosecute this case, the Court will grant Plaintiff one final opportunity to serve Defendants. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, if a defendant is not served within 120 days after the complaint was filed, the court — on motion or on its own after

notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

Accordingly, IT IS HEREBY ORDERED that service be made within thirty days — no later than July 10, 2008. Should Plaintiff need assistance, she is directed to contact the Pro Se Office of the United States District Court for the Southern District of New York, at 500 Pearl Street, Room 230, New York, New York 10007 (Telephone: 212-805-0175), and to request the assistance of the Pro Se Office in serving defendants. If Plaintiff fails to comply with this deadline, the case will be dismissed without further notice to the Plaintiff.

Dated: June 10, 2008
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

This Order has been mailed to:

Eulalia Rodriguez
#08-G-0197
Albion Correctional Facility
3595 State School Road
Albion, New York 14411-9399

Jessica T. Cohen, Esq.
New York City Law Department
100 Church Street
New York, NY 10007